IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.361/1996
(Chiranji Lal Sharma Vs. R.S.R.T.C. & Ors.)

Date of order : 5.12.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.C. Bhoot, for the petitioner.
Mr. P.K. Lohra, for the respondents.

By way of filing the present writ petition, the petitioner has prayed for directions to the respondents to place before this Court the proceedings of Departmental Promotion Committee held on 3.5.93 and to promote the petitioner as Depot Manager w.e.f. 2.12.1987 with all consequential benefits.

According to the facts inter alia narrated in the writ petition, the petitioner was appointed as Traffic Inspector on 5.5.74 after due selection. Before his appointment as Traffic Inspector/Assistant Depot Manager, he successfully completed the 7th Management Development Programme for Traffic Officers

from Central Institute of Rod Transport (Training & Research), Poona. The petitioner was confirmed as Traffic Inspector w.e.f. 6.5.75. He was charge-sheeted on 18.3.1983 under Regulation 34 of Rajasthan State Road Transport Corporation Employees Service Regulations, 1965 and against the said charge-sheet, he filed his reply. Ultimately in the departmental enquiry, he was awarded punishment of censor vide order dated 14.5.1985, which is placed on record as Annexure-5. It is stated in the writ petition by the petitioner that the alleged negligence for which the censor was awarded was for the period 11.1982 to 21.12.1982. Thereafter, he was sent for course to promotional post.

The respondent-Corporation held the meeting of Departmental Promotion Committee on 28.11.87 and vide order dated 2.12.1987, 38 persons were promoted to the post of Depot Manager but name of the petitioner does not find place in the said promotion order but number of persons junior to him were promoted. It is further contended in the writ petition that service record of the petitioner was quite clean and un-blamed except the above noted award of censor for the year 1983 and that too was subjudice before the conciliation officer. According to the petitioner, he was possessing M.A., L.Lb qualification but he was not recommended for promotion. He filed D.B. Civil Writ Petition No.348/88 before this Court

at Jaipur Bench. The proceedings of DPC under which the promotions were made was ultimately quashed by this Hon'ble Court and respondents were directed to held fresh DPC to consider the cases of Traffic Inspector/Assistant Depot Manager for promotion to the post of Deport Manager. Thereafter as per the directions of this Court, the DPC met on 8.9.92 and 31 persons were promoted as Depot Manager vide order dated 10.9.92. The proceedings of DPC under which 31 persons were promoted was again challenged before this Hon'ble Court at Jaipur Bench and proceedings were quashed and respondents were directed to reconsider the entire matter. Thereafter, at last, the matter for promotion was again placed before DPC on 3.5.93 and on the basis of the recommendations of the DPC, an order was issued for promotion of 35 persons on the post of Depot Manager on 18.6.93.

It is stated in para-7 of the writ petition that one Mool Singh Dewal preferred a writ petition being No.5179/93 before this Court challenging his non-selection in the DPC held on 3.5.93 on the ground that the criteria of selection is seniority cum merit and his juniors cannot be promoted unless a finding recorded by the DPC that he is not fit for promotion. In the said writ petition filed by Mool Singh Dewal, this Hon'ble Court passed an order that he may be promoted on the post of Depot Manager within 15 days and may be given seniority w.e.f. 2.12.1987. This

judgment was upheld upto Hon'ble Supreme Court.

As per the averments made in the writ petition, the service record of the petitioner is clean except the penalty of censor and that too was under challenge before the conciliation officer, Ajmer and he is working with utmost satisfaction of his higher authorities. But he has been denied promotion on extraneous consideration and since the selection is made on the basis of the record, the petitioner cannot be denied promotion unless there is an adverse entry in the service record which creates any disqualification for the promotion. Further, it is submitted that the penalty of censor for the year 1982 cannot be an obstacle for promotion w.e.f. 2.12.1987 for the post of Depot Manager. The petitioner has stated in the writ petition that his junior persons were considered for promotion while ignoring his case for promotion to the post of Depot Manager, which is violative of Article 14 and 16 of the Constitution of India.

Learned counsel for the petitioner vehemently argued that the promotion to the post of Depot Manager is made on the basis of the seniority cum merit and in his case censor cannot be treated to be a disqualification for promotion in view of the judgment dated 23.3.1990 passed by this Court rendered in SB Civil Writ Petition No. 2613/87 (Mool Singh Vs.

RSRTC & others), therefore, the action of the respondents for denial of promotion to the petitioner while promoting junior persons is illegal and violative of Article 14 and 16 of the Constitution of India. It is submitted that nothing is adverse against the petitioner on record upon which promotion to the post of Depot Manager can be denied. However, he has been deprived his promotion on illegal premises.

Per contra, learned counsel for the respondents vehemently argued that admittedly the penalty of censor which is enumerated in Regulations of Corporation was inflicted against the petitioner and according to Regulation 117, there is a procedure for recruitment by promotion and at the time of considering candidature entire service record including penalty imposed under the disciplinary enquiry is required to be considered. Admittedly in the year 1982, the penalty of censor was inflicted against the petitioner which is enumerated under the Rajasthan State Road Transport Workers & Workshop Employees Standing Orders 1965. therefore, the petitioner was rightly denied promotion to the post of Depot Manager while taking into account the said penalty under consideration.

Learned counsel for the petitioner has heavily relied upon the judgment of Hon'ble Supreme Court in case of UOI & Ors. Vs. K.V. Janikiraman &

Ors., reported in (1991) 4 SCC 109 and judgment of this Court in case of Mohan Singh Vs. State of Rajasthan & Anr., reported in 2002 (5) WLC (Raj.) 691 and latest judgment of Hon'ble Supreme Court in case of Union of India & Ors. Vs. A.N. Mohanan, reported in (2007) 5 SCC 425 and submitted that censor is a punishment enumerated as penalty in the Standing Orders and admittedly it was inflicted upon the petitioner in the year 1982 and the same was considered by the Departmental Promotion Committee and petitioner was denied promotion by the Departmental Promotion Committee which is in accordance with the Standing Orders and Regulations of the respondent-Corporation.

I have considered the rival submissions made by the parties.

In this case, it is not disputed by the petitioner that there was a penalty of censor against him inflicted in the year 1982. The petitioner is claiming his promotion w.e.f. 2.12.1987. Obviously on that day, penalty of censor was on service record and at the time of considering the candidature of the employee for promotion, the Departmental Promotion Committee is required to follow the procedure laid down in the Regulations of 1965. Regulation 117 of the Regulations of 1965 reads as follows :

Procedure for recruitment by promotion

“117. (a) A selection strictly on seniority cum merit shall be made from among the persons eligible for such promotion under the provisions of these regulations.

(b) the posts on which appointments shall be made by promotion shall be notified by the Corporation from time to time.

(c) In selecting the candidates for promotion, record shall be had to their;

(i) academic qualifications including experience,

(ii) tact, energy and intelligence,

(iii) integrity and

(iv) previous record of service

(d) As soon as it is decided that a certain number of posts in a class of service will be filled up by promotion the Deputy General Manager or such other authority as may be nominated by the Corporation, shall prepare a list of senior most persons eligible for promotion, not exceeding 10 times the number of vacancies.

(e) The service recruitment board shall recommend the means to the

> appointing authority for appointment on promotion posts after considering cases of those who have passed the requisite practical test, written test or qualifying written examination, to judge the suitability of the candidates included in the list and interviewing such of them as the Board may deem necessary.
>
> (f) The General Manager shall in consultation with the Head of Department prescribe the standard of practical test and syllabus of written test of qualifying written test or qualifying written examination for the purpose of clause (e) of the regulation."

Upon perusal of aforesaid Regulation 117, it is obvious that in Regulation 117 (c) (iv), previous record of service is also required to be considered even if the promotion is made on the basis of seniority cum merit. Therefore, the penalty of censor which is one of the penalty enumerated in the Standing Orders of the Corporation and it has been inflicted against the petitioner in the year 1982, therefore, the candidature of the petitioner was rightly rejected by the Departmental Promotion Committee for promotion to the post of Depot Manager. The Hon'ble Apex Court in case of UOI & Ors. Vs. K.V. Jankiraman & Ors. (supra) has held in para -23, which reads as follows :

> "23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17 (1) of the Fundamental Rules and Supplementary Rules which reads as follows :
>
> "F.R. 17. (1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw they pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties :
>
> Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

Similarly in recent judgment of Hon'ble Supreme Court reported in (2007) 5 SCC 425 (supra), it has been observed in para 11 and 12 as follows :

> "11. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Para 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.
>
> 12. Having regard to the penalty imposed on him, undisputedly the respondent has been given promotion with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of the High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside."

The judgments cited by learned counsel for the petitioner are not relevant in view of the aforesaid latest decision of Hon'ble Supreme Court.

Upon aforesaid provisions of law, it is clear that penalty of censor is blameworthy factor for the purpose of promotion and it has to be considered at the time of considering the case of promotion by the Departmental Promotion Committee. In this case according to the respondents, enumerated penalty of

censor was inflicted against the petitioner, therefore, he was not found suitable for promotion by the DPC. In my opinion, no error has been committed by the respondents while considering the penalty of censor as embargo for promotion to the post of Depot Manager.

In view of the above discussions, this writ petition fails and is hereby dismissed.

(GOPAL KRISHAN VYAS), J.

arun